Annex 9

Summaries of Selected Cases Concluded by Preliminary Inquiries

Cases Concluded under Internal Complaint Handling Programme

HONG KONG HOUSING AUTHORITY (HKHA)

Case No. OMB 2003/1907

HKHA – refund of rental – delay in refund of excess rental paid by autopay

The complainant used to be the tenant of a public housing unit. He subsequently purchased the unit through the Tenants Purchase Scheme, but Housing Department (HD), the executive arm of HKHA, continued to charge him rental by debiting his bank account through autopay. He went twice to the property services office (PSO) of the estate to request for refund of the excess rental paid, but there was no response for over a year.

2. HKHA explained that the management of the estate and the PSO had been outsourced to a property management agent. As the complainant had not notified his bank or HD to stop the autopay authorisation, the bank continued to pay his rental to HD. Although he had gone twice to the PSO to apply for refund, the staff had failed to forward his application to HD for follow-up and so caused the delay. Upon receipt of the complaint, HD immediately arranged the refund and sent a written apology for its negligence.

3. To enhance the quality of service and to avoid recurrence, HD had instructed PSO staff to handle tenants' applications and enquiries more carefully.

REGISTRATION AND ELECTORAL OFFICE (REO)

Case No. OMB 2003/4242

REO – application for change of personal particulars – unreasonably rejecting application for change of residential address

The complainant had notified REO in early September 2003 of change of her residential address and applied for a corresponding change of her constituency for the District Council elections in November 2003. Not receiving immediate response from REO, she raised an enquiry and was told that her application could not be accepted because the address in her

application did not match with the REO records. As a result, the complainant could not vote in her new constituency.

2. REO clarified that according to the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulations, applications for change of voter's personal particulars submitted after 29 August 2003 would be reflected only in the 2004 Register of Electors. As the complainant applied for change of residential address on 3 October 2003, REO could not process in time for the complainant to cast her vote in her new constituency in the 2003 District Council elections.

3. Although The Ombudsman accepted REO's explanation, she noted that it had taken REO almost two months to finish processing the application. Meanwhile, no interim reply (apart from the initial acknowledgement) had been issued to the complainant. In response to The Ombudsman's suggestion, REO undertook to revise its procedures to keep applicants informed of the progress of their applications by interim replies where necessary.

TRANSPORT DEPARTMENT (TD)

Case No. OMB 2003/3211

TD – minibus stop – delay in moving a minibus stop back to its original location

The complainant alleged that due to improvement works at an MTR station, a nearby minibus stop had to be temporarily relocated to somewhere close to her residence. The original plan to move it back by May 2003 was not carried out and the minibus stop remained there several months after completion of the works. As a result, she was affected by noise and exhaust for a long time.

2. TD explained that to allow for the construction of a footbridge system and improvement works at the MTR station, the original site of the minibus stop had to be temporarily closed and the traffic diverted. The minibus stop was temporarily moved near the complainant's residence to ease traffic congestion. Meanwhile, the Department had asked the public light bus associations and the minibus service contractors to take steps to reduce the nuisance from noise and exhaust to nearby residents. The road works and ancillary drainage works took much longer to finish. Upon completion of the works in October 2003, TD immediately arranged for the minibus stop to be relocated. The noise and air pollution problems were hence resolved.

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3. TD apologised for the inconvenience caused by the temporary relocation of the minibus stop. It undertook to monitor closely the progress of similar works in future to minimise their impact on the public.

Cases Concluded under Rendering Assistance / Clarification

BUILDINGS DEPARTMENT (BD)

Case No. OMB 2003/0097

BD – removal of illegal structures – (a) failing to give prior notice before posting a removal order, thus causing nuisance to the complainant; and (b) failing to respond to the complainant's repeated enquiries

The complainant alleged that BD did not give him prior notice before posting a removal order at his unit, thus causing him nuisance. BD also delayed handling the case and failed to reply to his enquiries.

Complaint (a)

2. In 2001 and 2002, BD launched a large-scale clearance exercise on illegal structures. Some 3,000 buildings were identified as target and the complainant's building was one of them. The owners were required to remove the illegal structures on the external walls. As the exercise involved considerable work, the Department appointed a contract consultant to survey the illegal structures on the external walls of the complainant's building.

3. In February 2002, the consultant's staff issued advisory letters to the owners and tenants of the complainant's building, informing them that their building had been included as a target for removal of any illegal structures as soon as possible. Later, the staff inspected the building again and found illegal structures outside the complainant's unit. A removal order was, therefore, posted on the metal gate of his unit.

4. Section 35 of the Buildings Ordinance provides that a removal order may be served by registered post or by posting on a conspicuous part of the unit concerned. In addition, BD had established procedures for serving removal orders. Its staff had to post the original of the order on a conspicuous part of the unit while a copy of the same would be further served to the owner by post.

5. This Office considered the posting of the order on the complainant's metal gate appropriate as it complied with established procedures and the relevant legislation. The staff of the consultant had issued advisory letters to owners of the complainant's building in February 2002 asking them to remove any illegal structures. There was, therefore, no impropriety on the part of BD.

Complaint (b)

6. The complainant claimed that he had telephoned BD three times in December 2002 and January 2003 to enquire about the posting of the removal order, but the Department failed to respond. This Office noted that there was discrepancy in the dates of enquiries claimed by the complainant and those provided by the Department. However, it was indisputable that the complainant did telephone to enquire on 17 December 2002 and the Department did not reply until 2 January 2003.

7. This Office considered it understandable that BD could not give a prompt reply as it had to wait for information from the consultant. BD did give the complainant a detailed explanation as soon as it obtained the information. Nevertheless, it would have been better if BD had contacted the complainant earlier to explain why it could not answer promptly. Overall, this Office considered there was no impropriety in the Department's handling of the case.

CHIEF SECRETARY FOR ADMINISTRATION'S OFFICE (CS's OFFICE)

Case No. OMB 2003/0489

Administration Wing of CS's Office – public petition – failing to provide clear guidelines on handling applications to petition at Central Government Offices

The complainant alleged that when she went to petition at the Government Secretariat (GS), she was refused entry by a security guard because she had not made prior application. However, another GS staff there explained that she had been refused entry because the area for petitioning could only accommodate 15 persons and the limit had already been reached. She was dissatisfied with the inconsistent replies and considered the Administration Wing's procedures for the public, particularly those going alone, to petition at the Central Government Offices (CGO) to lack transparency, causing misunderstanding and inconvenience.

2. This Office noted that the Director of Administration had issued some Guidance Notes on 27 November 2002 on the arrangements for the public to go into the designated area outside the main entrance of the CGO Main Wing to hand in petitions to Executive Council Members. However, it applied mainly to groups seeking to hold public meetings or processions inside the CGO compound. It did not state clearly what procedures individuals should follow.

3. The Guidance Notes also mentioned special arrangements for Tuesday mornings when Executive Council is in session. Petitioners were allowed to express their opinions and hand in their petitions to Executive Council Members without prior application. However, no details were given for public compliance. This Office considered improvement to the Guidance Notes necessary and so suggested to the Administration Wing.

4. This Office was pleased that the Administration Wing undertook to amend the Guidance Notes to clarify how an individual, apart from groups, may apply for permission to petition at the CGO. They would also consider adding a clause to explain in detail the arrangements for handling petitions during Executive Council meetings on Tuesday mornings. They subsequently amended and publicised the Guidance Notes incorporating the details of these special arrangements.

CIVIL ENGINEERING DEPARTMENT (CED)

Case No. OMB 2003/0827

CED – compensation claims – impropriety in handling compensation claims for massive fish-kills

The complainant, a mariculturist, claimed that a reclamation project had caused massive fish-kills in his culture zone. However, he was not compensated as other similarly affected mariculturists. He complained against CED for handling the compensation claims inappropriately.

2. With the agreement of the Legislative Council (LegCo), an Independent Review Panel (the Panel) was commissioned to investigate whether the fish-kills had been caused, wholly or partly, by the reclamation project. Prior to the investigation, it was agreed that a Liaison Group comprising LegCo Members and representatives of the mariculturists (representatives) should be set up to assist the Panel.

3. The representatives collated data on the affected mariculturists and the amount of dead fish claimed by them. Based on the representatives' submissions, the Panel assessed the quantity of dead fish killed by reclamation which should be duly compensated. However, the complainant's losses were not included in those submissions.

4. Throughout the exercise to assess compensation claims, CED had no contact with individual mariculturists and was not involved in data collection. At the time of the massive fish-kills period, CED's on-site staff had recorded the quantity of dead fish daily from the affected mariculturists. However, there was no record of the complainant's claims.

5. This Office considered that all claims for compensation had been settled in accordance with the package and procedures determined in consultation with parties concerned. The Department had not acted inappropriately in the absence of a dead fish record.

6. As to why the Panel did not have the complainant's record, the complainant might have to check with the representatives charged with data collation. As the representatives were not under The Ombudsman's jurisdiction, this Office could not investigate further.

COMMERCE, INDUSTRY AND TECHNOLOGY BUREAU (CITB), INFORMATION TECHNOLOGY SERVICES DEPARTMENT (ITSD), HOME AFFAIRS DEPARTMENT (HAD) AND SOCIAL WELFARE DEPARTMENT (SWD)

Case Nos. OMB 2003/1547
OMB 2003/1548
OMB 2003/1549
OMB 2003/1550

CITB, ITSD, HAD and SWD – website service – failing to provide satisfactory service

The complainant alleged that when she registered at the IT Hong Kong website (the Website) as a member, she was not given a membership number. As a result, she could not take part in a draw for a free computer course. She twice left a message with the enquiry hotline, but never had a reply. Her attempt to send an e-mail to the mailbox of the Website was also unsuccessful.

2. As HAD and SWD only supplied information on their IT courses to the Website for public reference, the two departments were actually not involved in this complaint.

3. CITB formulated policies on promoting information technology. It was ITSD's responsibility to operate the Website.

4. ITSD explained that users who registered as members of the Website had to set their own login ID and password. The free computer course mentioned by the complainant was run by another organisation (the Centre), and the Website only served as a link. Users had to register at the Centre's website. The complainant had mistaken her login ID to be a membership number of the Centre. ITSD subsequently explained the case to her. It also undertook to provide more details about course enrolment on the Website.

5. The enquiry hotline for the Website was operated by a contractor, who admitted that the operator on duty had not followed up her message and returned her call. The operator had been warned and disciplined. The contractor undertook to improve the enquiry hotline service.

6. Records showed that the mailbox of the Website had never received any enquiry from the complainant. While the mailbox service had been checked and found in order, ITSD undertook to provide clearer instructions on the service.

DRAINAGE SERVICES DEPARTMENT (DSD)

Case No. OMB 2002/3648

DSD – trade effluent surcharge – failing to collect trade effluent surcharge from the complainant earlier

The complainant alleged that DSD had failed to collect trade effluent surcharge (surcharge) from him until six years later, rendering it impossible for him to recover the surcharge from his previous tenant.

2. According to the Sewage Services Ordinance, industrial and commercial consumers, including restaurants, shall pay a sewage charge and a surcharge. As the complainant did not register his account under the "restaurant" category, DSD had not been levying the surcharge on him. Nevertheless, a bill for the surcharge was issued after the Department discovering in a site inspection that the complainant's premises had been used to operate a restaurant.

3. This Office noted that the Administration had publicised widely the charges for sewage services. In this case, DSD had explained to the complainant the calculation of the surcharge in details. Moreover, as the complainant could not get in touch with his previous tenant, DSD had exercised its discretion and reduced the surcharge payable. There was, therefore, no maladministration as DSD had acted according to the law.

ENVIRONMENTAL PROTECTION DEPARTMENT (EPD), LANDS DEPARTMENT (Lands D), FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD) AND PLANNING DEPARTMENT (Plan D)

Case Nos. OMB 2003/0679
OMB 2003/0680
OMB 2003/0798
OMB 2003/0799

EPD – noise nuisance – failing to monitor and control the noise from a container depot

Lands D – land grant – failing to consider the impact on nearby residents when approving the land grant for the container depot and to monitor its operation afterwards

FEHD – environmental hygiene – failing to tackle the refuse problem in the container depot

Plan D – planning issue – failing to take into account the environmental impact of the container depot when planning the land use

The complainant alleged that excessive noise was generated by a container depot near his residence. Moreover, junk and refuse often stacked in the depot and affected environmental hygiene.

EPD

2. EPD responded that the noise from the container depot was classified as industrial / commercial noise and controlled by the Noise Control Ordinance. The Department had conducted noise measurements at different times and the total noise volume recorded each time did not exceed the statutory limit. This Office considered that EPD had taken appropriate action on the complaint.

Lands D

3. Lands D explained that the site was an old scheduled agricultural lot with no restriction on its land use. Using it as a container depot, therefore, did not contravene the lease. For this reason, we agreed that Lands D need not take any action.

FEHD

4. FEHD said that its staff had only found some junk temporarily stored in the depot awaiting collection for recycling. It did not affect environmental hygiene. It followed that FEHD could only continue to monitor the situation as there was no justification to take control action for the time being.

Plan D

5. Plan D pointed out that according to the relevant outline zoning plan, the site fell within an area zoned as “Undetermined”. As the container depot had been in existence before the gazetting of the Notice of the Draft Development Permission Area Plan in 1993, it was deemed “Existing Use”. The depot could, therefore, continue its operation without seeking permission from the Town Planning Board.

6. This Office considered that since the site had been used as a container depot for a long time, it could not be said that Plan D had not taken into account its environmental impact when planning the land use.

Conclusion

7. The Ombudsman concluded that there was no maladministration on the part of the four departments in the case.

FIRE SERVICES DEPARTMENT (FSD) AND WATER SUPPLIES DEPARTMENT (WSD)

Case Nos. OMB 2003/0419
OMB 2003/0420

FSD – fire service facilities – failing to actively handle and follow up an application
WSD – work attitude – failing to provide consistent information and shirking responsibility

The complainant's father applied to FSD for the installation of an additional fire hydrant in his village. However, he did not receive any reply after some three months; so he wrote again to enquire. Subsequently, FSD replied that his application had been referred to WSD for consideration more than three months ago, but no reply had yet been received. The complainant was dissatisfied with WSD for the delay in replying and telephoned twice to enquire. WSD staff said that a site inspection would be conducted but gave different dates for it. One officer also stated that the inspection had been delayed because he had been away on leave. The complainant was dissatisfied that both departments had delayed handling her father's application.

2. FSD explained that the unit in charge of receiving letters was different from that responsible for handling applications. There was insufficient communication between them, and they both assumed that the other would issue an acknowledgement. This resulted in no acknowledgement being issued. Nevertheless, upon receipt of the application, FSD did send staff to inspect the site and produced a report. As the installation of additional fire hydrants had to be taken up by WSD, the proposal was referred to WSD for consideration. It was FSD's original intention to reply to the complainant's father on receipt of WSD's decision. However, it had underestimated the time required for inter-departmental efforts and failed to inform the complainant's father of the progress in time. FSD had written to the complainant to explain and apologise.

3. WSD explained that due to the heavy workload of the staff concerned, it was not possible to conduct a site inspection immediately after receiving FSD's proposal. Soon after the complainant's telephone enquiries were received, the staff concerned re-arranged their work priorities, inspected the site, assessed the costs of the works and promptly informed FSD of its decision.

4. WSD also clarified that its Officer A had told the complainant a site inspection would be conducted by a certain date. Subsequently, Officer B informed the complainant that site

inspection had been conducted before due date. The information provided by the two officers, therefore, was consistent. Officer B admitted that he had mentioned his vacation leave to the complainant. However, he had no intention of using that as an excuse for the delay. WSD apologised for the misunderstanding between its staff and the complainant.

Conclusion

5. This Office considered that there was insufficient communication between FSD and WSD. They had failed to view the case from the applicant's perspective, with each department doing things in its own way. Had FSD taken the initiative to check progress with WSD after referral of the application (or if WSD had notified FSD of its inability to inspect the site immediately) and kept the applicant informed, the applicant would have been much more satisfied.

6. The Ombudsman was pleased to note that FSD had instructed its staff to adhere strictly to the departmental general orders in handling applications, while WSD had improved its work priorities.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD)

Case No. OMB 2003/0427

FEHD – handling of request – (a) imposing an additional lighting requirement on the complainant's swimming pool; and (b) failing to give a substantive reply to the complainant's request for exemption from such requirement

The complainant, the owners' corporation of a private housing estate, lodged a complaint against FEHD for imposing an additional lighting requirement on its swimming pool. It applied for exemption from this requirement as it would mean uncomfortable glare to residents near the pool, which was already sufficiently illuminated by underwater lighting. Furthermore, although a few interim replies had been issued in response to the complainant's enquiries, FEHD had failed to give a substantive reply to the complainant's request for exemption after almost a year since the application.

2. As the imposition of lighting requirement involved technical assessment of the level of illumination, it was not an administrative matter. This Office, therefore, dealt only with complaint (b).

3. To establish an acceptable level of illumination with ancillary safety requirements, FEHD had conducted literature search on overseas practices, consulted the Hong Kong Life Saving Society and initiated a review of the overall regulatory control of private swimming pools. We considered FEHD to have acted to ensure public safety and appreciated its difficulties in setting a standard timeframe for providing substantive replies to applications for licence-related exemption. However, it had nevertheless caused inconvenience to the complainant.

4. This Office suggested that the Department should expedite its review on the regulatory control of private swimming pools and issue a substantive reply to the complainant. For better service to the public, it should also set specific target times for the issue of interim replies. FEHD responded positively to our suggestion and issued internal instructions on the timeframe for issuing interim replies to applications for licence-related exemptions. It had also given a substantive reply to the complainant.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD)

Case No. OMB 2003/0919

FEHD – public facilities – giving contradictory replies on the responsibility for cleansing concrete benches at a public square

The complainant found ten concrete benches at a public square covered with dirt and stains. He telephoned FEHD and enquired whether they were responsible for cleansing the benches. FEHD staff told him that the Department was responsible only for removal of litter, but not stains, on those benches. Later, he lodged a written complaint with FEHD. The Department replied that the District Office (Environmental Hygiene) for the area had always been responsible for removing any litter on the benches and would "cleanse the benches every week". The complainant was dissatisfied with the two contradictory replies.

2. FEHD explained that the concrete benches in question were built with a coarse surface prone to dirt and stains. Whilst the cleansing teams under the Department would remove any litter on the benches during their daily street cleaning routines in the vicinity of the square, washing the benches was not among their duties.

3. In spite of this, upon receipt of the complainant's initial enquiry, FEHD immediately sent a team to cleanse the benches and discussed with Lands Department the responsibility for cleansing the benches. It also proposed that the Architectural Services Department should apply some smooth and easy-to-clean material on the seats as a long-term solution.

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4. As for the "weekly cleansing" of the benches, FEHD was using its discretion to arrange for their cleansing in the spirit of service to the public after consultation with various departments. When the complainant first made his enquiry to FEHD, cleansing the benches was indeed not one of its duties. Nevertheless, FEHD subsequently took up the responsibility and therefore indicated in its reply that it would "cleanse the benches every week".

5. This Office commended FEHD for being quick in response and proactive in handling the complaint. However, it had not explained fully and clearly the responsibility for cleansing the benches in its written reply to the complainant. We, therefore, suggested that the Department send an apology to the complainant on this point.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD)

Case No. OMB 2003/1601

FEHD – staff attitude – being impolite when responding to an enquiry

The complainant had asked a man in FEHD uniform on the street how to apply for permission to hang billboards on pavement railings. The man responded that the matter was not on his duty schedule and advised him to find the answer himself. The complainant alleged that the FEHD staff was rude and that his look was intimidating.

2. This Office agreed that the subject of the complainant's enquiry was not within the purview of that officer. It was, therefore, no surprise that he could not provide an answer. Furthermore, as the complainant had raised his question out of the blue while walking on the street, the officer's look of surprise was only a natural reflex reaction.

3. The incident did not involve maladministration. We suggested that the complainant check with the Central Telephone Enquiry Centre of the Home Affairs Department if he had questions about the ambit of Government departments.

Summaries of Selected Cases Concluded by Preliminary Inquiries

GOVERNMENT LABORATORY (Govt Lab)

Case No. OMB 2003/2131

Govt Lab – DNA analysis – delay in laboratory analysis such that the complainant was unable to claim back his wife's body earlier

The complainant alleged that Govt Lab had delayed the DNA profiling of his late wife and her surviving sister (i.e. the complainant's sister-in-law) so that he could not claim back his wife's body earlier. He was dissatisfied that it had taken Govt Lab seven months to complete this test. However, when the police later proposed a similar test with his daughter, it could complete the test within three or four weeks. As there was such a big difference in the time required for completing the two tests, he considered there to be impropriety on the part of Govt Lab.

2. Our investigation revealed that, in January 2003, the police had found a burnt corpse and, after preliminary investigation, suspected it to be the complainant's wife. To confirm the identity, the complainant asked the police to arrange for a DNA analysis of the corpse and his sister-in-law. After the analysis, Govt Lab concluded that the DNA profiles based on the deceased's blood sample and the sister-in-law's saliva sample might not be able to establish their kinship. In this connection, Govt Lab suggested that the police provide saliva or blood samples from both the complainant and his daughter for tests and analysis.

3. Govt Lab explained that it had taken seven months to complete the first DNA analysis because it included the waiting time as well as the actual time required for doing the analysis. As regards the time mentioned to the police for a sample from the complainant's daughter for another test, it referred only to the time required for the analysis without that for queueing.

4. Govt Lab indicated that requests for DNA analysis would be processed according to the information or requests provided by the police or other originating organisations. As to the case in question, since the police did not request speedy testing and the job itself did not warrant priority treatment, Govt Lab handled it in accordance with normal procedures.

5. This Office considered that, faced with the Government's tightening budget but an ever increasing demand for DNA analysis, it was reasonable and appropriate for Govt Lab to establish a priority system in processing cases according to their nature and urgency. We noted that conclusions drawn from laboratory analysis by Govt Lab involved professional judgment and decisions. These were not administrative issues and we would not comment on them.

6. In addition, under The Ombudsman Ordinance, Hong Kong Police Force was outside our jurisdiction except for complaints in relation to non-compliance with the Code on Access to Information. We would, therefore, not comment on the actions or decisions taken by the police in this case.

HIGHWAYS DEPARTMENT (Hy D)

Case No. OMB 2003/0133

Hy D – handling of enquiries – failing to follow up properly an enquiry on repair costs

The complainant damaged a safety buffer in a traffic accident. The Police completed investigation of the accident in eight months and referred the report to Hy D. Three-and-a-half months later, Hy D made a preliminary claim for damages from the complainant. Suspecting the accident to have been due to poor maintenance of the road surface, the complainant refused to pay and asked the Department to examine the cause of the accident more thoroughly. However, it was not until one-and-a-half years after her enquiry that the Department notified the complainant of the actual repair costs and its investigation findings. In all, it had taken the Hy D two-and-a-half years after the accident to complete calculating the damages.

2. Hy D admitted that it had not followed up the claim and responded to the enquiry according to established guidelines. This Office suggested that the Department apologise to the complainant in writing. It should also review its guidelines and procedures for recovery of costs and speed up the calculation of damages.

3. Hy D implemented our suggestions in August 2003 to streamline its recovery procedures. Besides handling its claims together with those involving Electrical and Mechanical Services Department facilities, Hy D undertook to inform the parties concerned of the estimated and actual repair costs within one month and six months respectively upon receipt of the Police investigation report.

Summaries of Selected Cases Concluded by Preliminary Inquiries

HOME AFFAIRS DEPARTMENT (HAD)

Case No. OMB 2003/0364

HAD – complaint handling – failing to handle seriously a complaint against illegal operation of holiday flats and to provide written replies

The complainant lodged a complaint in April 2002 with a District Office (DO) under HAD about illegal operation of holiday flats. However, HAD did not seriously handle the complaint and did not reply in writing.

2. In September / October 2002, the Office of the Licensing Authority (OLA) of HAD telephoned the complainant to tell him that a site inspection during office hours had not detected illegal operation of holiday flats. The complainant considered that OLA had failed to handle his complaint seriously as the case had been concluded after only one site inspection.

3. HAD stated that based on experience with the mode of operation of holiday flats, OLA had conducted six site inspections from May to October 2002 but detected no irregularities. In July, September and October 2002, the complainant was informed of the findings by telephone. Then in May 2003, a site inspection was conducted again to find the premises hired out as holiday flats. A warning letter was then issued to the operator.

4. We examined the report on the six inspections and noted that as OLA staff could not enter the premises, it was not possible to confirm whether there was illegal operation of holiday flats. This Office noted that the complainant had stated clearly that holiday-makers usually checked into the premises during Saturday nights or the evening immediately before public holidays. The six inspections by OLA had been conducted outside those specified periods.

5. This Office considered that OLA had indeed failed to look into the actual situation. If OLA had taken the complaint seriously for action earlier, delay for nearly a year could have been avoided.

6. As regards the failure to provide written replies, HAD indicated that a written reply had been given on the day DO received his complaint by telephone and by fax, telling him that the complaint had been referred to Lands Department (Lands D). In July and December 2002, DO had also informed the complainant of progress by telephone. A written reply on the result of the investigation had been given in February 2003. In addition, between May and October 2002, OLA had telephoned the complainant many times to update him on developments.

7. This Office considered that apart from the verbal reports on progress, DO and OLA should have given the complainant a detailed written reply early so that the complainant would know his complaint was properly handled.

8. Furthermore, as the complainant had stated clearly that there was illegal operation of holiday flats, this Office considered that DO staff should have promptly referred the complaint to OLA, the section responsible for handling such complaints. However, the staff were obviously not familiar with the ambit of their Department and referred the complaint to Lands D instead. It was on the advice of Lands D that DO reverted to OLA for action.

9. This Office considered that the staff concerned should be more alert about the nature and substance of complaints in order to refer them promptly to the appropriate office.

HOSPITAL AUTHORITY (HA)

Case No. OMB 2003/0745

HA – service charges – impropriety of a public hospital in charging for Accident and Emergency services

The complainant's son, injured in an accident at school, was taken to a public hospital. Upon registration at the Accident and Emergency (A&E) Department, he was initially assessed by a duty nurse for triage. On learning that her son would have to wait for 90 minutes to see the doctor, the complainant considered that too long. She asked a nurse whether she would need to complete any formalities and pay the fees if they wanted to leave. The nurse said it was not necessary. However, the complainant later received a bill for A&E charge. She considered that the charging policy was unclear and that the nurse had misled her.

2. The hospital explained that the triage process was part of the A&E services. Once registered and triaged, even if the patient decided not to receive medical treatment, the fee still applied. The nurse concerned did not remember the incident or details of her conversation with the complainant. On receipt of this complaint, HA had apologised to the complainant and posted notices in the A&E Department to inform the public of the charges for A&E services.

Annex 9

Summaries of Selected Cases Concluded by Preliminary Inquiries

HOUSING DEPARTMENT (HD)

Case No. OMB 2003/0837

HD – building maintenance – failing to take proper follow-up action to replace a cracked glass panel at a shopping centre for more than six months

In August 2002, HD's management contractor (the company) observed a cracked glass panel at a shopping centre under its charge. The company reported to the police and wrote to HD on the following day to request its architect to conduct a thorough investigation, pointing out that "latent defects" of the glass panel might have been the cause. HD architect replied that the responsibility to follow up the incident and investigate the cause (including whether there were "latent defects") rested with the company.

2. After corresponding with HD several times, the company wrote again in October 2002 reiterating that the cracks had been caused by "latent defects" and not "vandalism", and requesting funds for replacing the glass panel. HD considered the request unreasonable and asked the company to continue probing for the cause.

3. In January 2003, HD sent a letter to the company, requesting immediate replacement of the glass panel. The company placed an order with the supplier in late March. The new glass panel was at last installed at the end of May.

4. The complainant considered it maladministration on the part of HD since it had failed to properly pursue the replacement of the glass panel solely because of the hanging dispute.

5. This Office noted that while HD had consistently refused to accept "latent defects" as being the cause, it had not taken up the investigation itself nor suggested any specific solution to the problem. It had just allowed the problem to drag on. This was inappropriate.

6. As the cracked glass panel was located at a busy shopping centre, The Ombudsman considered that for public safety, HD should have proceeded to replace the glass panel at once after collecting evidence for tackling the responsibility issue.

Summaries of Selected Cases Concluded by Preliminary Inquiries

INLAND REVENUE DEPARTMENT (IRD)

Case No. OMB 2002/2569

IRD – recovery of tax – (a) delay in recovering from the complainant the overdue profits tax unpaid by his former business partner; and (b) miscalculation of the complainant's tax assessment

The complainant was in a partnership business from November 1987 to April 1988. He complained against IRD for not recovering from him until ten years later the overdue profits tax unpaid by his former business partner and failing to disclose to him details of the Department's recovery action taken against his former partner.

2. Between 1992 and 1995, IRD took tax recovery action against the complainant's former business partner. However, such action stopped when the Department could not locate him. On learning of his whereabouts in 2001, the Department reactivated the case and resumed its action, but still without success. As the complainant was a partner jointly and severally liable for the tax of the business, IRD also took action against him to recover the outstanding tax. Due to an oversight of its staff in checking the records, the Department failed to notice that the complainant had ceased to be a partner of the business since April 1988 and miscalculated the tax payable in demanding payment of tax for the whole of the year 1988 / 89.

3. IRD subsequently apologised to the complainant, explained its tax recovery action and adjusted the amount of tax payable by the complainant. Nevertheless, according to the secrecy provisions of the Inland Revenue Ordinance, the Department could not disclose to the complainant details of its tax recovery action against his former business partner.

4. This Office considered that there was delay on the part of IRD when it processed this case. It had also miscalculated the tax payable by the complainant. To avoid recurrence of such incidents, the Department had reviewed its procedures and implemented clearer guidelines.

Summaries of Selected Cases Concluded by Preliminary Inquiries

INLAND REVENUE DEPARTMENT (IRD)

Case No. OMB 2003/2147

IRD – change of address – failing to handle properly a company's notification of change of business address

The complainant alleged that the Business Registration Office (BRO) under IRD had failed to handle properly her company's notification of change of address.

2. IRD explained that it had received a Notification of Change of Business Address from the company in July 1999 and accordingly amended its records of the company's business address from Address A to Address B. In September 1999, IRD received the company's 1998 / 99 profits tax return and noted that the "Main Business Address in Hong Kong" stated in the return was Address A. IRD staff of Unit One responsible for handling profits tax referred the information to BRO, which then revised the records back to Address A in accordance with the Business Registration Ordinance.

3. In the ensuing years, however, all documents sent to Address A by BRO were returned undelivered. Each time, BRO staff would use the computer programme to automatically search for the company's correspondence address in its tax files and redirect the documents to Address B. Although the staff of Unit One and BRO had explained the situation to the company in writing and by telephone repeatedly and reminded it to notify BRO of its change of business address in writing with signature, the company did not do so.

4. Finally in July 2003, while checking the company's tax files, BRO discovered that the company had actually stated in its profits tax returns for 1999 / 2000, 2000 / 01 and 2001 / 02 Address B as its "Main Business Address in Hong Kong". Consequently, BRO decided to accept the company's change of business address to Address B and telephoned to notify the company of its decision.

5. This Office considered that IRD had changed the company's business address from Address B to Address A according to the relevant legislation. It was also reasonable for BRO to ask the complainant for an original copy of her signed notification to verify the signature and ensure authenticity of the information.

6. Nevertheless, upon the Unit One referral in September 1999 that the company's stated business address was Address A, BRO staff should have been aware that the company had just changed its address from Address A to Address B two months earlier. Had BRO taken the initiative to clarify with the company, the problem could have been resolved and the

incident avoided. Moreover, when BRO staff could not contact the company with Address A, they did not follow up promptly so that the misdirection of documents continued for some years, causing waste of time and resources.

7. On the other hand, the company was also responsible. Though the company had changed its address to Address B in July 1999, it still stated Address A as its business address when submitting its tax return in September 1999. Moreover, BRO had redirected the relevant documents to Address B several times, each time reminding the company to update its business address and notify BRO in writing. Unfortunately, the company ignored the reminders.

8. This Office considered both BRO and the company to be responsible for this incident. IRD had reviewed the relevant procedures and reminded staff to follow up similar cases of inconsistent addresses. Meanwhile, IRD had apologised to the company for the inconvenience caused.

LANDS DEPARTMENT (Lands D)

Case No. OMB 2002/3536

Lands D – unauthorised structures – inconsistent advice as to its toleration standard; and disparity in enforcement action

In December 2000, staff of a District Lands Office (DLO) under Lands D inspected the complainant's premises to measure her unauthorised rooftop structures (including a canopy, some glass panes and window rails). While the staff explained to her the toleration standard of Lands D towards such structures, they did not state clearly whether or not the glass panes under the canopy and the rails should be removed. In response to DLO's advisory letter of October 2001, the complainant removed the glass panes. Subsequently, DLO staff visited the complainant's premises five times to inspect the rooftop, but no one answered the door. The five "messages" left by DLO staff were also ignored, so the case remained unresolved. In May 2002, DLO tightened its toleration standard towards unauthorised structures. Since the complainant's case had not yet been concluded, the glass panes and rails that remained became subject to the new standard, so DLO demanded their removal. The complainant thus felt that DLO had given her inconsistent advice.

2. This Office found that DLO staff had only given verbal advice to the complainant about Lands D's toleration standard without stating clearly which parts of the structures could be

retained. The subsequent advisory letter again failed to explain that, thus easily leading to misunderstanding. Furthermore, DLO staff only left the complainant a "message" each time despite their five unsuccessful attempts to access her premises in seven months. They had never sent her a formal letter about their intention to conduct a site inspection. This was quite inadequate.

3. As regards the complainant's allegation of Lands D's disparity in enforcement action against her neighbour, the latter had in fact rectified part of his unauthorised structures before the tightening of the toleration standard, and obtained DLO's consent to retain the remaining canopy and small glass panes. As for other cases in the village, DLO had already issued advisory letters to the owners concerned, registered the advisory letters with the Land Registry and would continue to take enforcement action. There was, therefore, no disparity in enforcement action.

4. Lands D had issued new guidelines to all DLOs to improve communication between their staff and property owners concerned and to ensure consistent application of the toleration standard towards unauthorised structures, avoiding any impression of inconsistency and unfairness.

LANDS DEPARTMENT (Lands D)

Case No. OMB 2003/0216

Lands D – short-term tenancy for garden use – charging excessive rental by improperly including car park rental; and poor staff attitude

The complainant alleged that a District Lands Office (DLO) of Lands D had over-charged rental for his short-term tenancy (STT) for a garden area for five years by including rental for a car park without his knowledge or application. He claimed that he had never parked any car there. However, DLO confirmed that a car had been found in the garden area during a site inspection prior to assessment of the STT rental. Following normal procedures, DLO had charged him rental which covered a car park, without stating it. Lands D pointed out that it would have explained to the complainant if he had queried the rental calculation before accepting the offer. Since the complainant had accepted the tenancy, he was liable for the agreed rental. Upon expiry of the first tenancy and the complainant's appeal, DLO reduced the rental of the second tenancy to exclude rental for car park although a car had twice been found parked there during site inspections.

2. Regarding the complaint of staff attitude, Lands D explained that when the complainant telephoned DLO to enquire about the rental issue, the officer concerned was on leave. Without knowledge of the details, his senior could only respond in general terms but had no intention to "pass the buck". When another officer called the complainant the next day to explain the general procedures for rental appeals, the complainant was not satisfied with the reply. In the absence of an independent witness, this Office could not draw any conclusion on staff attitude.

3. The Ombudsman suggested that DLO should apologise to the complainant for failing to provide him with clear information on the rental calculation in its letter offering STT. To ensure fairness and clarity, Lands D should review its procedures to state clearly in its offer letter whether rental included a car park. It should also issue guidelines to staff. Lands D had accepted our suggestions.

LANDS DEPARTMENT (Lands D)

Case No. OMB 2003/0252

Lands D – Government rent exemption – (a) refusing to recognise the complainant's "succession status"; (b) unreasonably rejecting his application for Government rent exemption; (c) delaying response to his enquiries on the progress of his application; and (d) failing to send the notification letter to his current address

Relevant Legislation

Under Section 4(1) of the Government Rent (Assessment and Collection) Ordinance (the Ordinance), Government rent may be exempted for an eligible lease of a rural property which an indigenous villager held on 30 June 1984 and which continues to be held by the indigenous villager or a lawful successor in the male line of the indigenous villager. Section 4(2) of the Ordinance states that Government rent exemption applies to a lease of a rural property that an eligible "tso" or "tong" held on and since 30 June 1984.

Complaint (a)

2. According to the complainant, the lot in question used to be held by a "tso" of which his late maternal grandmother was the manager. As there was no male descendant from his maternal grandmother's own family, the "succession status" had been conferred on him and

he had succeeded his grandmother as manager and so recognised by the "tso". Nevertheless, Lands D was of the view that he had not acquired the lot through the male line of succession and, therefore, did not recognise his "succession status". The complainant considered it unreasonable.

3. Lands D explained that the lot had been held by the "tso" on 30 June 1984 and conveyed to the complainant on 19 March 1985. As the complainant had acquired the lot by assignment, he was not a "lawful successor in the male line" according to Section 4(1) of the Ordinance. Furthermore, the property of a "tso" / "tong" had to be handled in accordance with Section 4(2).

4. This Office considered that Lands D had handled the case in accordance with the law. There was no maladministration.

Complaint (b)

5. The complainant claimed that conveyance of the lot had been approved by the local District Officer in February 1984 and verified by the Registrar General in December of the same year. Nevertheless, Lands D was of the view that the relevant procedures had not been completed until 19 March 1985. It, therefore, rejected his application for rent exemption. The complainant considered it unfair. Lands D further stated that the lot was not eligible for rent exemption because it was held in the name of the complainant instead of the "tso" / "tong". Being the manager of a "tso", the complainant considered that it made no difference whether the lot was held in the name of an individual or the manager of the "tso" because there was no descendant in the family.

6. Lands D explained that according to the Registrar General's records, conveyance of the lot had been completed on 19 March 1985. It was, therefore, not eligible for rent exemption under Section 4(2) of the Ordinance. This Office considered that according to the law, holding a lot in the name of the a "tso" / "tong" was different from holding it in the name of an individual.

Complaint (c)

7. The complainant claimed that he had made several enquiries on the progress of his application for rent exemption since 1995, but Lands D had not responded promptly.

8. According to Lands D, the complainant submitted his application for rent exemption in 1995. As there were some 120,000 applications and the Department was short of manpower, it could not issue the preliminary notification until December 2000 and the final notification letter until January 2001. In March 2002, the complainant re-applied. The Department replied

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with a copy of the final notification letter in June 2002. He wrote several times to Lands D to ask for reasons for rejecting his application and to lodge an appeal. The Department had responded promptly each time.

9. This Office considered that Lands D had responded specifically to his enquiries within a reasonable period of three weeks and there was no delay.

Complaint (d)

10. The complainant claimed that Lands D had sent the final notification letter to his previous address so he had not been able to receive it.

11. Lands D explained that it had not received any notice of change of correspondence address or notice of non-delivery from the Post Office since receipt of the complainant's application in 1995. It was not aware that the complainant had moved.

12. This Office accepted Lands D's explanation.

LANDS DEPARTMENT (Lands D) AND DRAINAGE SERVICES DEPARTMENT (DSD)

Case Nos. OMB 2003/0741
OMB 2003/1176

Lands D and DSD – processing of small house application – inadequate inter-departmental communication affecting the complainant's project

The complainant alleged that a District Lands Office (DLO) of Lands D had mishandled his small house application by failing to take into consideration the resumption of land for DSD's proposed drainage improvement programme. He received a resumption notice when his small house was under construction. He also complained against DSD for failing to notify Lands D of the land resumption in time.

2. According to Lands D's instructions, DLOs should consult relevant departments when processing small house applications but there was no standard consultation list. In this case, DLO had no information regarding DSD's proposed improvement programme and land resumption when it processed the complainant's application. It had approved the application

after consulting two relevant departments, Water Supplies Department and Planning Department. It had no idea that the complainant's lot was within the land resumption area until it received DSD's land clearance application.

3. This Office considered that DLO should have included DSD for consultation because the complainant's small house lot was very close to a river. Should flooding occur, drainage works would be required. Similarly, DSD should have notified DLO of its proposal in good time so that the latter could take it into account when processing small house applications.

4. On receipt of the complaint, DLO made an apology to the complainant and advised DSD to exclude his lot from resumption. DSD subsequently revised the boundary of its land resumption and agreed to exclude the complainant's lot.

5. This case reflected the inadequate communication between Lands D and DSD. Both departments accepted The Ombudsman's advice to improve their consultation and coordination and be more considerate to the public.

LANDS DEPARTMENT (Lands D) AND
HOME AFFAIRS DEPARTMENT (HAD)

Case Nos. OMB 2003/0720
OMB 2003/0721

Lands D and HAD – change of land use – inadequate public consultation

The site in question was zoned "Government / Institution / Community" and was meant to be developed into a park in the long term. At the request of some LegislativeCouncillors and District Councillors, Lands D considered using the site as a temporary car park for goods vehicles. In accordance with its departmental guidelines and procedures, the District Lands Office (DLO) concerned under Lands D sought the views of other relevant departments. They raised no objection to the proposal.

2. DLO also sought assistance from the local District Office (DO) of HAD to conduct public consultation. According to the existing policy, for large-scale developments having a significant impact on the whole district, DO would assist the departments concerned to seek the District Council's views. For small-scale projects, DO should verbally consult the local District Councillors or residents' organisations concerned. In this case, DO verbally consulted

two District Councillors, one local and the other from the neighbouring district, both of whom supported a temporary car park for goods vehicles on the site in question.

3. This Office considered there was no maladministration on the part of DLO as it had consulted the departments concerned and arranged public consultation through DO before granting a short-term tenancy for car park use.

4. However, DO was not thorough enough in consulting only two District Councillors without seeking the views of local residents' organisations. Furthermore, as the District Councillors concerned regarded DO's consultation only preliminary, they did not consult local organisations either.

5. This Office suggested that, when consulting District Councillors, DOs should explain in detail the consultation procedures to avoid misunderstanding. HAD accepted our suggestion.

LAND REGISTRY (LR)

Case No. OMB 2003/2639

LR – insufficient guidelines – failing to provide user-friendly guidance to the public for filing applications and charging fees for reswearing of amended memorials

The complainant applied to LR for registration of individual lodgement of deeds. After she had submitted the memorial forms, an LR officer notified her that there were some errors. First, the name of her late husband on the memorial forms and the Certificate of Exemption from Estate Duty did not accord with that on the Death Certificate or LR records. Then, the particulars regarding undivided shares of the property cited in the memorial forms and the Certificate of Exemption were incomplete. She had, therefore, to make corrections, reswear and resubmit the forms at a fee.

2. The complainant alleged that LR's guidance notes for individual lodgement did not specify how names should be entered on memorial forms. She claimed reimbursement of fees for resubmitting the forms, and suggested that The Ombudsman should initiate action for Government departments to introduce user-friendly guidance so that ordinary citizens could file their applications without the need to seek legal assistance.

3. This Office noted that detailed guidance – the Memorial Form Easy Guide – was already available on the LR website, giving step-by-step answers to problems in completing memorial forms. However, the information sheet "Points to Note for Lodging a Deed to the Land Registry for Registration" made no mention of this electronic guide. At our suggestion, LR added a note to the information sheet advising the public to refer to the Easy Guide on the website.

4. As LR charged fees in accordance with the conditions set out in the application forms and the Land Registration Fees Regulations, this Office was not in a position to intervene.

POST OFFICE (PO)

Case No. OMB 2003/0229

Post Office – counter service – failing to advise the complainant of the requirements of Prepayment in Money mailing service

The complainant alleged that on two occasions, the staff of a post office had made things difficult for her when she used the Prepayment in Money (Prepayment) service to send out business mail. On the first occasion, the staff had asked her to tie the letters in bundles of 50; then on the second occasion, she was told she could not use the service as her letters were non-standard mail. The complainant had used the same service for similar mail at the same post office before but had never been advised of these requirements.

2. PO explained that in the first incident, the staff was just acting according to established service guidelines, whilst the second occasion might have been caused by a new officer's inadequate knowledge of the service. As to whether the staff of the post office had previously advised the complainant of the requirements, she was not a regular user of the service and the Department could not comment on this point. Nevertheless, PO apologised to the complainant, both for its staff's failure to explain the requirements when she first used the service and for her unhappy experience in the second incident. It also arranged proper training for the staff concerned.

3. This Office considered that as the frontline staff provided services to a large number of people every day, it would be almost impossible to explain to all customers the detailed requirements of its services. In case of doubt, users should ask the staff or obtain copies of information pamphlets for reference. We also recommended that PO remind its frontline

staff to offer all users of business mail service a copy of the brochure "Sending Local Mail in Hong Kong – a Guide for Business" for reference. Moreover, it should add such words as "Applicable to all types of mail (standard and non-standard)" in the Prepayment section of the brochure. PO undertook to introduce the proposed improvement measures.

POST OFFICE (PO)

Case No. OMB 2003/0541

Post Office – complaint handling – failing to handle seriously a complaint against loss of mail parcel

The complainant sent four pens, valued at HK$8,000, by registered mail to his son in the United Kingdom (UK) as a Christmas gift. As the UK Customs and Excise levied heavy duty on those pens, his son refused to accept them and they were returned to the sender. However, after a few months, the complainant still had not received those pens. He, therefore, enquired with PO. About three months later, PO informed him that the Royal Mail had confirmed those pens as being lost. In accordance with the Universal Postal Union (UPU) regulations, PO agreed only to offer compensation of HK$320. The complainant did not accept HKP's offer and alleged that it had not been serious in handling his complaint against the loss of mail and failed to trace the cause for the loss. He was also dissatisfied that the staff of the Mail Tracing Office had taken a long time to answer his call and he felt cheated that he had not been informed beforehand of the compensation ceiling.

2. PO explained that in handling enquiries on mail, it had to write to the postal administration of destination first to seek information. UPU stipulated that the postal administration of destination (the Royal Mail in this case) should respond to such enquiries within two months. When PO acknowledged the enquiry, it had already explained this point to the complainant. PO stressed that it had tried its best to locate the lost mail for the complainant.

3. As for the allegation that when he enquired with the Mail Tracing Office, his call was answered only some 20 minutes later, PO's records showed that the complainant had telephoned during off-peak hours. With four officers on duty, there should have been sufficient manpower to ensure callers that did not have to wait too long.

4. This Office noted that UPU stipulated the maximum compensation payable for loss or damage of registered mail to be equivalent to HK$320. This was listed in the Guide on Postage Rates and Services available for viewing at post offices free of charge.

5. Records on this case indicated that PO had actively followed up the complainant's case. However, as the loss took place in UK, there was difficulty for PO to trace the item. The Royal Mail had already accepted full responsibility and extended its apology for the loss. This Office considered that PO was not at fault in this case.

6. Regarding the alleged delay in answering the complainant's call, the complainant's version differed from PO's explanation. We could not make a judgment in the absence of any supporting evidence.

7 As for compensation for the lost item, we considered that PO had acted in accordance with established guidelines and no impropriety was involved. Nevertheless, this Office advised PO to include information on the compensation ceiling on the receipt for registered mail for the information of senders. Our suggestion is under consideration by PO.

RATING AND VALUATION DEPARTMENT (RVD) AND LANDS DEPARTMENT (Lands D)

Case Nos. OMB 2003/0487
OMB 2003/0996

RVD – Government rent – (a) misleading the complainant into thinking that she was not required to pay; (b) delaying the demand for payment for four years; (c) failing to confirm the amount; and (d) giving improper advice

Lands D – Government rent – (e) delaying notification to RVD of cancellation of rent concession

In July 1999, after purchasing a flat, the complainant notified RVD of change of ownership. She claimed to have received a Demand Note for Rates in late 1999 which showed the amount of Government rent to be zero. However, RVD stated that no such demand note had been issued to the complainant. Instead, an acknowledgement slip on change of payer's name had been sent to the complainant's husband in 1998 with the printed remark "No outstanding amount", because the rates and Government rent for the property had been settled then.

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2. The property in question was previously owned by an indigenous villager, for whom Lands D had approved a rent concession in 1998 under the Government Rent (Assessment and Collection) Ordinance. The complainant then became the owner of the property in July 1999 and was not entitled to the rent concession. Lands D did not notify RVD of the cancellation of the concession until March 2001 so that assessment of Government rent for the property could not be carried out earlier. Lands D explained that the delay had been caused by their heavy caseload and manpower constraints. RVD said they had a similar problem and, therefore, could not assess the Government rent for the property until February 2003, two years after receipt of Lands D's notification. As a result, the complainant had to pay substantial arrears of Government rent.

3. This Office considered that there had been delay on the part of both Lands D and RVD. RVD should have given the complainant an explanation. We also suggested that RVD consider allowing her to pay her arrears of Government rent by instalments.

4. RVD admitted that a demand note bearing the amount payable had not been sent together with a Notice of Interim Valuation to the complainant. Furthermore, their staff had given misleading advice on the complainant's application for payment by instalments.

5. In response to the suggestion of this Office, RVD apologised to the complainant. To avoid recurrence, RVD also undertook to give guidelines for staff on handling such cases.

TRANSPORT DEPARTMENT (TD)

Case No. OMB 2003/0437

TD – traffic signals – neglecting the views of organisations of visually impaired persons in implementing the Electronic Audible Traffic Signals Project

An organisation serving visually impaired persons complained against TD for neglecting the views of organisations of that sector (relevant organisations) in the replacement of electro-mechanical audible traffic signals (ATS) with electronic ATS (e-ATS). It alleged that the Department's consultation was "a mere gesture" and the replacement project jeopardised the safety of visually impaired persons.

2. Electro-mechanical ATS at pedestrian crossings aim to assist visually impaired persons in crossing the roads. However, the sound from such ATS could only be set at a fixed level. They might, therefore, cause nuisance to nearby residents at night. TD, therefore, arranged

for some of the equipment to operate only between 7 a.m. and 11 p.m. However, that was opposed by relevant organisations, which demanded a 24-hour operation. To strike a balance between the interests of visually impaired persons and residents, TD began a study in 2000 on the feasibility of replacing the electro-mechanical ATS with e-ATS capable of automatic adjustment of sound level, and started testing and assessing the performance of different products.

3. In the process, TD maintained close contact with the relevant organisations. From March 2000 to August 2002, TD held 13 consultation sessions to seek opinions from the relevant organisations and other members of the public.

4. In August 2002, TD arranged site inspections for representatives of the relevant organisations to test several models of e-ATS. Some representatives expressed concern over the “directional function” of e-ATS, indicating that the equipment should be able to help visually impaired persons to find the traffic signals. They also gave their opinions on the “directional function” of various products, and held that one of the products performed better. TD, however, pointed out that its procurement procedures had to comply with the Administration’s open tender policy. It could set out the specifications for the equipment but could not specify a certain brand. In fact, the specifications in the tender documents had taken into account most of the opinions raised by the relevant organisations. However, the “directional function” was regarded only as an “ancillary” function, and the operational specifications of “directional function” were not set out. One of the relevant organisations (the complainant) complained afterwards that the “directional function” of the new e-ATS was inadequate.

5. TD pointed out that some of the relevant organisations supported the new e-ATS, whilst some visually impaired persons who had received orientation and mobility training considered that after adjustment of the sound level, the new equipment had proved useful in directing them to cross the roads safely. Meanwhile, a small number of relevant organisations provided written suggestions to TD on technical improvements, but they did not raise any objection to the use of the new equipment.

6. After examining all relevant information, this Office noted that since 2000, TD had started to consult the relevant organisations and the public on the replacement project. The Department had earnestly listened to comments and its consultation was not “a mere gesture”. Nonetheless, the Department had not examined in detail the express concern of the relevant organisations over the “directional function” of the e-ATS. If it had clarified and included the operational specifications of “directional function” into the tender documents, it would not have been necessary to take a series of remedial measures after the new equipment had

been installed. The replacement project should undoubtedly take into account the needs of visually impaired persons. However, TD had to strike a balance between the interests of different parties. TD was right to strive to meet the expectations both of visually impaired persons and the nearby residents.

7. This Office considered that although TD could have done better in its consultation and examination of public opinions, there was no impropriety.